

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**ROSEMARY SCHULTZ**  
**Complainant,**

**vs.**

**THE UNITED STATES OF AMERICA,**  
**Defendant**

§  
§  
§  
§  
§  
§  
§

**CIVIL ACTION NO.** 5:20-cv-853

---

**COMPLAINANT'S ORIGINAL COMPLAINT FOR DAMAGES  
UNDER THE FEDERAL TORT CLAIMS ACT**

---

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COMES NOW ROSEMARY SCHULTZ, hereinafter referred to as Plaintiff in the above styled cause, and file this Complaint for Damages against The United States Of America, ("Defendant USA"), for negligence of the United States pursuant to the Federal Tort Claim Act, 28 U.S.C. § 2674, and for cause of action would respectfully show this Honorable Court the following:

**I. SUMMARY OF THE CASE**

1. This is an action against Defendant, The United States of America, under the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., and 28 U.S.C. § 1346 (b)(1) to recover money damages for negligence of Defendant USA and the injuries sustained by Plaintiff, and other relief appropriate as a result of the negligent acts of The United States of America by one or more employees while acting in the course and scope of their office or employment.

**II. PARTIES**

2. The Plaintiff is a resident of the State of Texas. Each of the relevant facts complained of occurred at San Antonio, Bexar County, Texas within the San Antonio Division of the United States

District for the Western District of Texas.

### **III. JURISDICTION & VENUE**

3. This action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., and 28 U.S.C. § 1346 (b)(1) for money damages that was caused by the negligent or wrongful acts or omissions of one or more employees of the United States government while acting within the course and scope of their office or employment under circumstances where Defendant USA, if a private person, would be liable to Plaintiff for the wrongful death and damages in accordance with Texas law.

4. This action arises out of a collision that occurred on or about August 8, 2018 in Bexar County, Texas, where the Plaintiff resides. Bexar County is in the Western District of Texas, San Antonio Division.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1402(b) because the collision occurred in Bexar County, Texas.

### **IV. AMOUNT IN CONTROVERSY**

6. Plaintiff seeks all elements of actual damages recoverable by law. Plaintiff claimed \$1,005,000.00 in damages in the administrative claim and seeks damages in such amounts here.

### **V. STATEMENT OF CLAIM**

7. Pursuant to 28 U.S.C. § 2675(a), Plaintiff timely presented her claim for damages with the United States Department the Army, (SF-95) which was received by Defendant USA on September 6, 2018. As of February 6, 2020, more than six months have elapsed since the claim was presented to Defendant USA. Defendant USA has not made a final disposition of Plaintiffs' claims. Accordingly, the claims of the Plaintiffs are deemed denied pursuant to 28 U.S.C. § 2675(a). A copy

of the SF-95 claim form is attached to Plaintiff's Original Complaint and marked as Exhibit "A".

8. Receipt of the claim (Army Claim No. 18-141-T039) by the Department of the Army on September 6, 2018 was acknowledged by attorney John P. Mitcham, Army Claims Division. (See Mitcham correspondence acknowledging receipt of claims attached as Exhibit B).

9. Service of Citation may be had upon the Defendant, United States of America, by serving its agent, John F. Bash, United States Attorney for the Western District of Texas and its office located at 601 N.W. Loop 410, Suite 600, San Antonio, Bexar County, Texas 78216-5597, and by sending a true and correct copy of the Complaint by Certified Mail, Return Receipt Requested, to the Honorable William Barr, Attorney General of the United States of America, the Department of Justice, 10<sup>th</sup> and Constitution N.W., Room B-112, Washington, D.C. 20530 and to Ryan D. McCarthy, Secretary of the Army, Department of the Army, 101 Army Pentagon, Washington, D.C. 20310-0101

## **VI. BACKGROUND FACTS**

10. On or about August 8, 2018, Plaintiff, ROSEMARY SCHULTZ, was driving a vehicle and was stopped at a red traffic light on Stone Oak Parkway in San Antonio, Texas.

11. On that date and time, JAIME ANTONIO ROMAN, an agent or employee of the Defendant, UNITED STATES OF AMERICA, by and through the U.S. Department of Homeland Security, was operating a government vehicle while in the course and scope of his employment with Defendant, UNITED STATES OF AMERICA.

12. Defendant was traveling on the same roadway and in the same direction when Defendant failed to control the speed of his vehicle and collided into Plaintiff's vehicle.

13. As a result of the collision described above, Plaintiff suffered bodily injuries and damages to her person and body generally.

## **VII. CAUSES OF ACTION**

### **A. Negligence**

14. Defendant was guilty of acts of omission and commission which constituted negligence and negligence per se, and such acts and omissions, singularly or in combination with others, were a proximate cause or causes of the collision in question and of the serious bodily injuries and damages to Plaintiff.

15. Defendant was negligent in that he violated the duty which he owed Plaintiff to exercise ordinary care in the operation of a motor vehicle in one or more of the following particulars:

- a. in failing to control the speed of the vehicle and colliding the vehicle into the Plaintiff's vehicle;
- b. in being inattentive and colliding the vehicle into Plaintiff's vehicle;
- c. in failing to keep such lookout that a person of ordinary prudence would have kept under the same or similar circumstances and colliding the vehicle into Plaintiff's vehicle;
- d. in failing to drive safely by colliding the vehicle into Plaintiff's vehicle;
- e. in failing to keep a proper lookout;
- f. in failing to apply or timely apply the brakes to the vehicle; and
- g. in driving at an excessive or unreasonable rate of speed such that he was unable to stop or prevent the vehicle from colliding into the vehicle Plaintiff was occupying.

Each of such acts and omissions, singularly or in combination with others, constitute negligence which proximately caused the collision and the injuries and damages which Plaintiff suffered.

## **VIII. CAUSATION**

16. JAIME ANTONIO ROMAN was guilty of acts of omission and commission which

constituted negligence and negligence per se while acting as an employee of Defendant, UNITED STATES OF AMERICA and while acting in the course and scope of his employment and in the furtherance of the business of Defendant, UNITED STATES OF AMERICA, and was a proximate cause or causes of the incident in question and of the property damages and serious bodily injuries and damages to the Plaintiff for which sum Plaintiff herein now sues and for which sum said Defendant is vicariously liable. Defendant, UNITED STATES OF AMERICA is liable to Plaintiff under the theory of *respondeat superior*.

#### **IX. DAMAGES**

17. At this time, Plaintiff seeks monetary damages of \$1,005,000.00.

18. Such damages include but are not limited to property damages, past and future physical pain and mental anguish, past and future physical impairment, past and future medical care expenses, past and future damage to earning capacity and past and future disfigurement. All of said damages are a direct and proximate result of Defendant's negligence and negligence per se.

#### **X. PRAYER**

19. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant herein be duly cited to appear and answer herein, and that upon final hearing of this cause, Plaintiff have and recover judgment from Defendant in an amount within the jurisdictional limits of this Court, together with post-judgment interest as allowed by law, plus reasonable costs of Court, and for such other and further relief, both general and special, at law and in equity, to which the Plaintiff may show herself to be justly entitled.

Respectfully Submitted,

TYLER & PEERY  
5822 West IH-10  
San Antonio, Texas 78201  
(210) 340-0900 TELEPHONE  
(210) 736-9197 FACSIMILE



---

DENNIS C. PEERY  
State Bar #15728750  
Email: [d.peery@tylerpeery.com](mailto:d.peery@tylerpeery.com)  
ATTORNEY FOR PLAINTIFF